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IN THE

Supreme Court of the United States

October Term, 1949

No. 486

ROBERTSON ROCK BIT COMPANY, INC.,
INDUSTRIAL MANUFACTURING & TOOL CO.,
and COLIN T. ROBERTSON,

Petitioners,

vs.

HUGHES TOOL COMPANY,

Respondent.

MOTION FOR PERMISSION TO FILE SUPPLEMENTAL BRIEF, AND SUPPLEMENTAL BRIEF, IN SUPPORT OF PETITION FOR REHEARING ON DENIAL OF PETITION FOR WRIT OF CERTIORARI.

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Petitioners respectfully move the Court for permission to file the supplemental brief submitted herewith, which is made necessary by the decision on appeal of the *Williams* case (*Hughes Tool* v. *Williams*, 82 F. Supp. 408, D. C. W. D. Okla., 1949, Judge VAUGHT) by the Tenth Circuit Court of

Appeals on or about March 17, 1950, of which we first heard on March 20, 1950.

Respectfully submitted,

FLOYD H. CREWS,
Attorney for Petitioners.

DARBY & DARBY,
HARVEY W. MORTIMER,
Of Counsel.

New York, N. Y.,
March 21, 1950.

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The Williams Case.

In our petition for rehearing we relied upon the *Williams* case (*Hughes Tool* v. *Williams*, 82 F. Supp. 408 (D. C. W. D. Okla., 1949), Judge VAUGHT) discussed on pages 2 and 3, as one which would present a direct conflict with this case in the event the decision of the Tenth Circuit Court of Appeals should be unfavorable to the Hughes Tool Company.

The *Williams* case has now been decided by the Tenth Circuit Court of Appeals unfavorably to Hughes Tool. The Court held that "retipping" is not an infringement of Hughes Tool's patents. This appears from a letter written by Mr. Robert B. Cartwright, Clerk of the Tenth Circuit Court of Appeals, to counsel for both sides in that case, under date of March 17, 1950 as follows:

> "I have today received a letter from Chief Judge Orie L. Phillips, which reads as follows:
>
> > 'You are hereby directed to advise counsel on both sides in No. 3915, C. F. Williams, Jr. vs. Hughes Tool Company, that the Court has reached the conclusion that the patents in suit are valid, but that retipping of the bits constitutes repair and not reconstruction, and therefore, retipping does not constitute infringement of the patents.
> >
> > 'The Court desires reargument upon the following questions and those only, predicated on the assumption that the retipping of the bits does not constitute infringement of the patents:
> >
> > 1. What is the proper construction of the lease contract?
> >
> > 2. What is the legal effect of the lease contract with respect to the right to retip?
> >
> > 3. If the lease contract in terms or in legal effect prevents retipping, is the lease contract valid?'
>
> "The Court has directed me to advise you that supplemental briefs may be filed if desired on the points set forth above, and that the reargument would be set during the week of May 8, 1950, at Oklahoma City, Oklahoma. You will be advised of the exact date of reargument when the printed calendars are mailed to counsel."

The *Williams* case was relied on in our petition for certiorari as an instance of misuse of Hughes Tool's patents (p. 12), while Hughes Tool relied upon the decision of the District Court favorable to it in the same case as proof that its patents were not misused by suing Williams because it had the legal right to stop retipping (Respondent's Brief, p. 7).

The decision by the Tenth Circuit that Williams did not infringe therefore establishes that the Hughes suit for patent infringement against Williams was a use of patents in an attempt to stop retipping, which Williams had a legal right to do. This was therefore an attempt to extend the patents beyond their legitimate scope in direct conflict with the decision below that Hughes had not done so.

There is therefore a direct conflict with the decision below. The Court below held Hughes Tool had not misused its patents by suing retippers (specifically including Williams) for patent infringement (Petition for Certiorari, p. 12).

The Chicago Pneumatic Case.

Under this heading we pointed out in our Petition for Rehearing (p. 3) the measures taken by Hughes Tool to restrict litigation on its patents to the Fifth and Tenth Circuits.

Certiorari was granted in *Muncie Gear Works* v. *Outboard, Marine & Manufacturing Company*, 315 U. S. 759 (1942), because of the concentration of the industry in the Seventh Circuit, despite the fact that the patent in suit had been held valid in both the Sixth and Seventh Circuits.

Respectfully submitted,

FLOYD H. CREWS,
Attorney for Petitioners.

DARBY & DARBY,
HARVEY W. MORTIMER,
Of Counsel.

New York, N. Y., March 21, 1950.